REMARKS

I. Introductory Comments

Applicants thank the Examiner for accepting the Applicants' Third Rule 131 Declaration filed on June 18, 2007 ("Third Rule 131 Declaration"). No amendments have been made to the claims in this paper. Therefore, claims 1-14, 16, 18-24, and 26-30 remain pending in the application, all of which were rejected by the Examiner.

In the Office Action, the Examiner rejected: (1) claims 1-5, 8-12, 16, 18-24, and 26-30 under 35 U.S.C. §103(a) as being unpatentable over the combination of U.S. Patent Application Publication No. 2004/0137945 (hereinafter "Takagi"), U.S. Patent No. 5,995,824 (hereinafter "Whitfield"), U.S. Patent No. 6,529,602 (hereinafter "Walker"), and U.S. Patent No. 5,524,137 (hereinafter "Rhee"); (2) claims 6 and 13 under 35 U.S.C. §103(a) as being unpatentable over the combination of Takagi, Whitfield, Walker, and Rhee, in further view of U.S. Patent No. 6,230,214 (hereinafter "Liukkonen"); and (3) claims 7 and 14 under 35 U.S.C. §103(a) as being unpatentable over the combination of Takagi, Whitfield, Walker, and Rhee, in further view of U.S. Patent No. 5,668,863 (hereinafter "Bieselin").

For the following reasons, Applicants respectfully submit that the Third Rule 131 Declaration antedates the Takagi reference. Accordingly, Applicants respectfully request favorable reconsideration of the presently pending claims. Further, Applicants believe that there are also reasons other than those set forth below why the pending claims are patentable, and reserve the right to set forth those reasons, and to argue for the patentability of claims not explicitly addressed herein, in future papers. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

II. Rejection of Claims 1-5, 8-12, 16, 18-24, and 26-30 under 35 U.S.C. §103(a) as being unpatentable over Takagi, Whitfield, Walker, and Rhee

Applicants' Third Rule 131 Declaration provides more than sufficient evidence that Mr.

Elman and Mr. Hefter conceived of the claimed invention prior to February 27, 2001, and diligently reduced the claimed invention to practice from prior to February 27, 2001 until the filing of the present application on August 17, 2001. Based on the Third Rule 131 Declaration, Applicants have antedated the Takagi reference under 37 CFR §1.131. Accordingly, the Takagi reference does not qualify as prior art against the application.

The Takagi reference is a continuation of U.S. Patent Application No. 09/917,929, now U.S. Patent No. 6,690,950, which has a U.S. filing date of July 31, 2001, a mere seventeen days earlier than the filing date of the present Application. Clearly, the Rule 131 Declaration antedates this filing date. Furthermore, while Takagi claims priority to two Japanese Patent Applications, neither qualifies as prior art, nor can either foreign filing date be used as the 102(e) date for prior art purposes.

Japanese Patent Application No. 2000-231456, was filed in Japan on July 31, 2000. This was not a PCT application, nor was it filed on or after November 29, 2000. So, the §102(e) date is the earliest US filing date, which is July 31, 2001. As stated in the MPEP, "[f]oreign applications' filing dates that are claimed (via 35 U.S.C. 119(a)-(d), (f), or 365(a) or (b)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may **not** be used as 35 U.S.C. 102(e) dates for prior art purposes." MPEP §706.02(f)(1), emphasis in original. Japanese Patent Application No. 2001-185208, was filed in Japan on June 19, 2001. This application was not a PCT application, nor was it filed in the English language. So once again, the §102(e) date is the earliest US filing date, which is July 31, 2001. Lastly, neither Japanese application was published before August 17, 2001, the date Applicants filed this application, so neither application can qualify as prior art under any other section of 35 U.S.C. §102.

While the claims are distinguishable on the merits, the Takagi reference is not available as prior art. Thus, even if one were to adopt the position taken by the Examiner, the remaining references, namely Whitfield, Walker, and Rhee, fail to disclose all of the elements of the claimed invention. With respect to the merits, nevertheless, without the improper use of hindsight, one of ordinary skill in the art would not have been motivated to combine the four different references relied upon to reject claims 7, 14, 18, 26, and 27. See, e.g. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, (Fed. Cir. 1992) ("it is impermissible to use the claimed invention as an

instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious"). For the rejections that follow five different references are required to allegedly teach the claimed invention.

Therefore, the rejection of claims 1-5, 8-12, 16, 18-24, and 26-30 should be withdrawn.

III. Rejection of Claims 6 and 13 under 35 U.S.C. §103(a) as being unpatentable over Takagi, Whitfield, Walker, Rhee, and Liukkonen

Again, the claims are distinguishable on the merits. Nevertheless, without the availability of the Takagi reference, the Examiner acknowledges that Whitfield, Walker, Rhee, and Liukkonen, fail to disclose all of the elements of the claimed invention. Therefore, the rejection of claims 6 and 13 should be withdrawn.

IV. Rejection of Claims 7 and 14 under 35 U.S.C. §103(a) as being unpatentable over Takagi, Whitfield, Walker, Rhee, and Bieselin

The unavailability of Takagi reference means that claims 7 and 14 are also patentable since the Takagi reference is not available as prior art when taken in combination with the remaining references, namely Whitfield, Walker, Rhee, and Bieselin. Moreover, the claims are patentably distinct on the merits.

CONCLUSION

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under order number 65632-00041. To the extent necessary, a petition for extension of time under 37 C.F.R. §1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

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Respectfully submitted,

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